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Ampcor II, Inc. *and* Carpenters Local 3056, a/w Carpenters Industrial Council, Midwest Region. Case 25–CA–31472

December 22, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER AND PEARCE

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charge filed by the Union on May 7 and July 23, 2010, respectively, the Acting General Counsel issued the complaint on August 27, 2010, against Ampcor II, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On October 26, 2010, the Acting General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on October 26, 2010, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by September 10, 2010, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the Acting

General Counsel's motion disclose that the Region, by letter dated September 17, 2010, notified the Respondent that unless an answer was received by September 24, 2010, a motion for default judgment would be filed.²

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in La Porte, Indiana (the Respondent's facility), has been engaged in the manufacturing of casket hardware. During the 12-month period ending January 14, 2010, the Respondent, in conducting its business operations described above, sold and shipped from its La Porte, Indiana facility goods valued in excess of \$50,000 directly to points outside the State of Indiana.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Carpenters Local 3056, a/w Carpenters Industrial Council, Midwest Region (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

- 1. At all material times, David Christian has held the position of owner and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.
- 2. (a) The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

¹ The Acting General Counsel's Motion for Default Judgment and attached exhibits indicate that the complaint was served on the Respondent by certified and regular mail on August 27, 2010, and the documents sent by certified mail were refused on September 13 and 14, 2010. There is no indication that the documents sent by regular mail were returned. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003), and cases cited therein. Further, the failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. Id.; *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987), enfd. 843 F.2d 1392 (6th Cir. 1988).

² By email to the Region dated September 21, 2010, the Respondent's attorney stated, inter alia, that the Respondent was out of business; that it has no remaining assets that have not been seized and/or sold by its secured creditors; and that he could "think of no reason for AMPCOR II to challenge or oppose the current charges." The Board has long held that the liquidation of assets does not shield a respondent from the obligation to file a timely answer. See *Valiant Metal Products*, 244 NLRB 1049 (1979). Similarly, the Board has held that cessation of operations or bankruptcy does not relieve respondents of the obligation to file an answer. *OK Toilet & Towel Supply*, 339 NLRB 1100, 1101 (2003); *Miami Rivet of Puerto Rico*, 307 NLRB 1390, 1391 fn. 2 (1992); see also *Holt Plastering, Inc.*, 317 NLRB 451, 451 (1995) (respondent was not excused from filing an answer to compliance specification, even though the respondent notified the Board it had "ceased operations and liquidated the plant facilities").

- All production and maintenance employees but excluding office employees, clerical employees, guards, janitor-watchmen, professional employees, and supervisors as defined in the Act.
- (b) Since an unknown date prior to September 1, 2007, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from September 1, 2007, until August 31, 2011.
- (c) At all times since an unknown date prior to September 1, 2007, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.
- 3. (a) About January 14, 2010, the Respondent advised the Union of its decision to close its facility and cease operations on the same date.
- (b) On January 14, 2010, the Respondent ceased operations at its facility.
- (c) About January 14, 2010, the Union orally requested that the Respondent bargain collectively about the effects on unit employees of the plant closure.
- (d) The subject set forth in the preceding paragraph relates to the wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purpose of collective bargaining.
- (e) Since about January 14, 2010, the Respondent has failed and refused to bargain collectively about the effects on unit employees of the plant closure.
- (f) The Respondent engaged in the conduct described above in paragraph 3(b) without affording the Union an opportunity to bargain with the Respondent with respect to the effects on unit employees of the plant closure.
- 4. (a) Since about February 18, 2010, the Union, in writing, has requested that the Respondent furnish the Union with the following information:
 - (i) the amount owed to each employee for the four days worked January 11-14, 2010;
 - (ii) the amount owed to the employees having insurance deducted from their checks for December 2009 and January 2010;
 - (iii) the amount owed to each employee for their earned vacation pay as of January 1, 2010; and
 - (iv) the amount of any Union dues deducted but not paid to the Union for December 2009 and January 2010.
- (b) The information requested by the Union is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit, including its processing of grievances.

- (c) Since about February 18, 2010, the Respondent has failed and refused to furnish the Union with the requested information.
- 5. (a) About March 29 and April 2, 2010, the Union submitted grievances to the Respondent.
- (b) About April 19, 2010, the Respondent, by letter, informed the Union it would not respond to grievances or demands for arbitration.
- (c) Since about April 19, 2010, the Respondent has failed to continue in effect all the terms and conditions of the 2007–2011 collective-bargaining agreement described above by repudiating the grievance-arbitration provision of the agreement.
- (d) The Respondent engaged in the conduct described in the preceding paragraph without the Union's consent.
- (e) The subject set forth above in paragraphs 5(a) and (b) relates to the wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purpose of collective bargaining.

CONCLUSIONS OF LAW

- 1. By failing and refusing to bargain collectively with the Union about the effects on unit employees of the plant closure and by failing to provide the Union with the requested information, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act.
- 2. By informing the Union that it would not respond to grievances or demands for arbitration and by failing to continue in effect all the terms and conditions of the 2007–2011 collective-bargaining agreement by repudiating the grievance-arbitration provision of the agreement, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act.
- 3. The Respondent's unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, to remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of its decision to close its La Porte, Indiana facility and cease operations on January 14, 2010, we shall order the Respondent to bargain with the Union, on request, about the effects of its decision. As a result of the Respondent's unlawful con-

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duct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed both to make whole the unit employees for losses suffered as a result of the violations and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).³

Thus, the Respondent shall pay its unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of its decision to cease operating its La Porte, Indiana facility on the unit employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent ceased its operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at

the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

Further, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with requested information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information that it requested on about February 18, 2010.

Additionally, having found that the Respondent violated Section 8(a)(5) and (1) by failing to continue in effect all the terms and conditions of its 2007-2011 collective-bargaining agreement with the Union by repudiating the grievance-arbitration provision of the agreement and informing the Union that it would not respond to grievances or demands for arbitration, we shall order the Respondent, on request, to respond to grievances and/or demands for arbitration, including the grievances submitted by the Union on March 29 and April 2, 2010.

Finally, in view of the fact that the Respondent's facility is closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former unit employees who were employed at any time since January 14, 2010, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Ampcor II, Inc., La Porte, Indiana, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing and refusing to bargain collectively and in good faith with Carpenters Local 3056, a/w Carpenters Industrial Council Midwest Region, as the exclusive collective-bargaining representative of the employees in the following appropriate unit with respect to the effects of its decision to close its La Porte, Indiana facility and cease operations on January 14, 2010. The unit is:

All production and maintenance employees but excluding office employees, clerical employees, guards, janitor-watchmen, professional employees, and supervisors as defined in the Act.

³ See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 (1990). Neither the complaint nor the motion specifies the impact, if any, on the unit employees of the Respondent's decision to close. Thus, we do not know whether, or to what extent, the refusal to bargain about the effects of this decision had an impact on the unit employees. In these circumstances, we shall permit the Respondent to contest the appropriateness of a *Transmarine* backpay remedy at the compliance stage. See, e.g., *Buffalo Weaving & Belting*, 340 NLRB 684, 685 fn. 3 (2003); and *ACS Acquisition Corp.*, 339 NLRB 736, 737 fn. 2 (2003).

- (b) Failing and refusing to furnish the Union with requested information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.
- (c) Failing to continue in effect all the terms and conditions of its 2007–2011 collective-bargaining agreement with the Union by repudiating the grievance-arbitration provision of the agreement and informing the Union that it would not respond to grievances or demands for arbitration.
- (d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, bargain with the Union about the effects of its decision to close its La Porte, Indiana facility on January 14, 2010, and reduce to writing and sign any agreements reached as a result of such bargaining.
- (b) Pay to the unit employees their normal wages for the period set forth in the remedy section of this decision, with interest.
- (c) Furnish the Union with the information it requested on February 18, 2010.
- (d) On request, respond to grievances and/or demands for arbitration, including the grievances submitted by the Union on March 29 and April 2, 2010.
- (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (f) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix" to the Union and to all unit employees who were employed by the Respondent at any time since January 14, 2010. In addition to physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means,

if the Respondent customarily communicates with its employees by such means.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 22, 2010

Wilma B. Liebman,	Chairman
Craig Becker,	Member
Mark Gaston Pearce,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

MAILED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Carpenters Local 3056, a/w Carpenters Industrial Council Midwest Region, as the exclusive collective-bargaining representative of the employees in the following appropriate unit with respect to the effects of our decision to close our La Porte, Indiana facility and cease operations on January 14, 2010. The unit is:

All production and maintenance employees but excluding office employees, clerical employees, guards, janitor-watchmen, professional employees, and supervisors as defined in the Act.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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WE WILL NOT fail to continue in effect all the terms and conditions of our 2007-2011 collective-bargaining agreement with the Union by repudiating the grievance-arbitration provision of the agreement and informing the Union that we would not respond to grievances or demands for arbitration.

WE WILL NOT fail and refuse to furnish the Union with requested information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union about the effects of our decision to close our La Porte, Indiana facility on January 14, 2010, and WE WILL reduce to writing and sign any agreements reached as a result of such bargaining.

WE WILL pay to the unit employees their normal wages for the period set forth in the Decision and Order of the National Labor Relations Board, with interest.

WE WILL, on request, respond to grievances and/or demands for arbitration, including the grievances submitted by the Union on March 29 and April 2, 2010.

WE WILL furnish the Union with the information it requested on February 18, 2010.

AMPCOR II, INC.